AN ACQUISITION OF ORANG ASLI NATIVE LAND IN MALAYSIA: PERCEPTIONS AND CHALLENGES IN QUANTIFYING OF THE COMPENSATION

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Abstract

The law in Malaysia has left many issues and concepts open for practical investigation and resolution when it comes to assessing the worth of property rights of Orang Asli (the Malay term for the indigenous peoples in Peninsular Malaysia). The specific details remain to be worked out between parties in negotiation. With regard to compensation to acquisition of Orang Asli native land, there is considerable uncertainty about the following critical issues: what are the Orang Asli land rights and interests that have been, or might be affected by an acquisition exercise by the state authority? what is the nature of the impact on Orang Asli land rights and interests? how is loss, impairment or extinguishment to be determined? who is entitled to compensation and on what basis? how to distribute the compensation for Orang Asli Reserves or Areas? how is the extent of compensation to be measured? is there need a legislation reform to address the problems? This paper investigates the challenges to the valuers in Malaysia to quantify compensation for acquisition of Orang Asli native land. Orang Asli have strong bonds to land and view the worth of land from various dimensions (spiritual, cultural, communal and economic) far beyond those of private registered land; hence, the concept of individual exclusive title is not tenable to the Orang Asli. Orang Asli land rights fall victim to political marginalisation, are poorly managed, and are not accorded the adequate protection. Valuers tend to be uncomfortable when it comes to assessing the worth of property rights of Orang Asli; this is because the conventional valuation approaches are limited in their ability to address the totality of the principles needed in the valuation of such lands. This study conducted literature reviews in attempts to explore the issues to payment of compensation for native title in other countries. A preliminary study was then carried out to prove these issues into local context. It is revealed that the challenges to payment of compensation for acquisition of Orang Asli native land are: valuation approaches; land rights; monetary and non-monetary compensation; legal framework and, negotiation of compensation. It is suggested that the compensation issue for Orang Asli native land should be the subject of legislation reform.

Keywords: Land rights, perceptions, challenges, compensation, valuation approaches.

1.0 INTRODUCTION

This paper considers perceptions on the acquisition and the challenges in quantifying of the compensation for Orang Asli native land in Malaysia. The compensation for the partial or total extinguishment of Orang Asli (the Malay term for the indigenous peoples in Peninsular Malaysia) property rights is an area of uncertainty for the valuation profession in Malaysia. A particular issue in relation to the assessment of compensation for Orang Asli native land concerns the interests, which are deemed to confer differing level of rights\(^1\) from the ones

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\(^1\) No existing laws treat Orang Asli as legal owner to Orang Asli Reserve land; their legal status is only as tenant-at-will on State Land.
enjoyed by a titled land. The nature of interests of Orang Asli native land will vary and lesser interests may prevail, either under the relevant traditional laws and customs or as a result of actions, as compared to the grant of a group settlement area under Land (Group Settlement Areas) Act 1960, which have impaired but not wholly extinguished the rights.

Again, there are precedents relating to the compulsory acquisition of, and compensation for, lesser interests in land. The Spencer principle remains applicable and compensation is assessed on the basis of the amount a willing buyer would pay a willing seller for the interest. There are examples of courts assessing compensation for the compulsory acquisition or loss of leases, easements, licences, riparian rights, fishing rights and even the right to dig worms for bait (Gobbo, 1993). Similarly, the courts will develop methods for valuing lesser native title interests (Smith, 2001). This can serve as useful guide in valuing for compensation involving Orang Asli native land in Malaysia.

2.0 THE KEY ISSUES

Current laws in Malaysia leave many issues open for examination when it comes to assessing the worth of Orang Asli property rights. The specific details remain to be worked out between parties involved in negotiation. With regard to the compensation for Orang Asli native land affected by an acquisition, there is considerable uncertainty surrounding the following key issues:

- What are the Orang Asli land rights and interests that have been, or might be affected by an acquisition exercise by the state authority
- What is the nature of the impact on Orang Asli land rights and interests
- How is loss, impairment or extinguishment to be determined
- Who is entitled to compensation and on what basis
- How to distribute the compensation for Orang Asli Reserves or Areas
- How is the extent of compensation to be measured
- Is there a need for legislative reform to address the problems?

Opinions have been expressed by various quarters on the issues and proposed solutions mostly come from legal and land valuation discourses, which are often pursued within highly charged contexts of resource development or court litigation (Gardner, 1998; Sheehan, 1997, 1998; Nicholas, 1997). Not surprisingly, many parties are looking for the elusive formula or standardised procedure for the calculation of compensation.

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2 Native Title Act 1993 (Australia)
3 Parties involved are: Department of Aboriginal Affairs (JHEOA), the State Authority, the Acquiring Body and valuers
4 See also Sägong Tasi v The Selangor State Government [2002] 2 MLJ 591; Adong bin Kuwau and Anors v Kerajaan Negeri Johor and Anor [1997] 1 MLJ 418
3.0 RIGHTS AND INTERESTS OF ORANG ASLI ON THEIR NATIVE LANDS

3.1 Land Ownership

Orang Asli regard saka or traditional rights to specific ecological niches as owned communally by them from the time of their ancestors, and that these rights will continue to the following generations (Nik Yusof, 1996). To a large extent, their claims to these areas were not contested by other communities because these areas were invariably regarded as uninhabitable, remote and backward. In fact, it was not so much the lands that were coveted by others but rather the resources found therein. Being the persons with the best knowledge and talent to perform the exploitation of the resources (such as gaharu, resins, rattan, and petai), the Orang Asli had since 1400s found themselves being made use of by outsiders to harvest the forest produce.

The scenario changed with the arrival of Malay Rulers who assumed ownership of all lands lying within their claimed domain and thus ‘colonised’ the territories of the Orang Asli; the introduction of the Torrens System of land ownership during British colonial rule (Nik Yusof, 1996; Awang, 1996) later on was to reinforce this situation. Nonetheless, the Orang Asli were not altogether displaced from their traditional lands during these periods. In fact, during the later part of the British colonial rule (particularly in the 1930s and 1950s) some of the traditional territories of the Orang Asli were gazetted as Orang Asli reserves while others were recognised as Orang Asli areas or Orang Asli ‘sanctuary’. None of these, however, went so far as to confer legal territorial ownership to the Orang Asli; even the more recent Aboriginal Peoples Act (Act 134, 1954 revised 1974) stops short of the full recognition with its declaration of Orang Asli as merely tenants-at-will.

Recent years have seen several established Orang Asli settlements having to make way for significant development projects such as the Kuala Lumpur International Airport (KLIA), highways, private universities, the Sungei Selangor Dam and golf course, and for private housing and industrial development projects. It was clear to the Orang Asli that whenever the Government had to take the traditional territories away from them, it was for altruistic reasons.

As a reflection of resilience on their part, the Orang Asli resorted to various means to seek remedies, including the recourse to courts of law. They met with some degree of success to force the State to recognise their traditional or saka rights to their traditional territories and resources. In Koperasi Kijang Mas v Kerajaan Negeri Perak & Ors (1991), for example, the High Court ruled that irrespective of

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5 This contention has been challenged in Sagong Tasi case in Selangor where the court agreed with the Orang Asli’s argument that at no time did the Orang Asli give up their claim to their traditional territories to the sultans. On the contrary, while the sultans were regarded as having full dominion over the economy in the state, they did not have any sovereign claim over the land. In keeping with Islamic principles, land was seen as being owned by Allah, with the sultan merely acting as a trustee.
whether or not an area had been gazetted as an Orang Asli reserve, as long it was an Orang Asli area or an Orang Asli inhabited area, all resources in it, including timber, rightfully belonged to the Orang Asli concerned.

In Adong Kuwau & Ors v Kerajaan Negeri Johor & Ors (1997) where a dam built in the traditional territories of the Jakun tribe in Johor (to supply Singapore with drinking water) caused the Orang Asli in the area to be deprived of their subsistence base, the court ruled that because the Orang Asli were no longer able to subsist on the bounty of their traditional resource base, the state authority is to compensate the Orang Asli for the loss of income so effected, for a period of 25 years - or a total of RM26.5 million.

In the more recent Sagong Tasi & Ors v the Selangor State Government & Ors (2002), the court ruled that although the affected lands were not gazetted as an Orang Asli reserve or were untitled, those traditional territories where the community had lived and worked upon in accordance with their adat or custom are to be considered as having been accorded the same rights as that of a titled land and, as such, the law that applies elsewhere for acquisition should equally apply to the holders of the traditional lands.

The Orang Asli affairs are taken care of by the Department of Aboriginal Affairs (JHEOA). Perhaps to make up for its poor record of performance of the past as well as in response to the growing number of private developers keen to ‘develop’ Orang Asli areas in exchange for the rights to the resources found therein (especially timber)\(^6\), JHEOA introduced a new element in its 10-point development strategy: “introducing privatisation as a tool in the development of Orang Asli areas.” More specifically, its Ringkasan Program (Programme Summary, JHEOA 1993) lists the methods to achieve this, as follows:

1. To co-operate with the private sector to develop potential Orang Asli areas, especially in forest-fringe areas with developed surroundings; and

2. To create suitable platforms to represent the local Orang Asli community in joint venture with the private sector.

According to Nicholas (1996), such a joint venture works by having the Orang Asli sign away their rights to their traditional territories - normally through the JHEOA, an Orang Asli co-operative, or a representative committee of the community (such as a Lembaga Adat or Customary Council) - to a private corporation, which may or may not be an Orang Asli entity. In exchange for the right to mine, log, and own the land in perpetuity or on lease, the corporation enters into an

\(^6\) The JHEOA has received a total of 25 applications from corporations interested in developing Orang Asli areas under the privatisation programme (JHEOA 1997: 15). These applications, of which three had already been approved then, involved 1,176 families and 5,996 hectares of Orang Asli traditional territories.
agreement to provide basic infrastructural facilities and housing for the Orang Asli. In some instances, the promise of titled individual plots is thrown in.

Reliance on private sector (often driven primarily by profit motives) initiative to develop Orang Asli traditional territories has its risks, however, with the Orang Asli likely to end up in losing position. As an example, the first privatisation project ended with the private developer absconding after having cleared the area for the timber, and after planting only 15 per cent of the promised oil palm plantation and building only 12 per cent of the promised houses for the Orang Asli (Nicholas & William-Hunt, 1996).

Nicholas & William-Hunt (1996) added that in the wake of the appropriation of the Orang Asli’s landed property, whether by the state or private corporations and individuals, the Orang Asli faced forced resettlement, persuaded regroupment, and on occasions, outright expulsion from their traditional lands. To add to these, since recent years, they have found themselves facing a new threat (albeit from within) from the Orang Asli individuals or organisations who, having gained a measure of political leverage, now do the bidding of the state or the private developer, much to the detriment of the Orang Asli identity. This complicates matters as the core of Orang Asli identity - once linked very closely to their specific traditional lands and customs - is now being compromised. The very ‘indigenousness’ that has been claimed by those who have left their culture to assert their eligibility for indigenous rights and priority, is the very attribute to be discarded first as the New Orang Asli (in local parlance, ‘Orang Asli Baru’) aspire to be part of the mainstream. Ironically, those most vocal in staking claims to traditional lands are the very ones who neglect to apply traditional regimes of property and ownership (the very basis upon which their original claims were being based). The existence of this group bodes well for the State, particularly because it facilitates the effort to win control over the Orang Asli and their resources.

3.2 Tenant-at-Will

The rights of the Orang Asli over their traditional lands are spelt out in the Aboriginal Peoples Act, 1954. In effect, the Act provides for the establishment of Orang Asli areas and Orang Asli reserves. Previously, the view of the government was that under the Aboriginal Peoples Act, 1954 the best interest the Orang Asli may obtain from their traditional lands is as a tenant-at-will. This was due to the perception that the traditional lands the Orang Asli sit on are, in principle, state lands. The Orang Asli were therefore considered to occupy or stay on their traditional lands at the pleasure of the government; whenever the government needs the lands for any reasons, it would be just a matter of revoking the status of these traditional lands and issuing to the affected Orang Asli a short notice to vacate their traditional lands - notwithstanding the fact that the Orang Asli and their families may have been living in the area for generations. The Orang Asli are then expected to move from their traditional lands within a stipulated period.
or be forcibly evicted by the apparatus of the state. This is evident in the state of Selangor, as Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors shows.

Apart from being summarily evicted, the Orang Asli is not paid any form of compensation for the loss of their traditional lands. Instead, the Orang Asli is compensated purely based on Sections 11 and 12 of the Aboriginal Peoples Act, 1954. Any compensation pursuant to these sections is in effect discretionary and arbitrary since it is up to the authorities to decide on the quantum of compensation to be paid to the Orang Asli. There is no fixed guideline. The compensation payable to the Orang Asli pursuant to these sections is only for the loss of productive trees, buildings and any activities on the land. No compensation is paid for the acquisition or loss of the Orang Asli traditional lands. In reality, the amount paid to the Orang Asli as compensation for their loss of productive trees and buildings are measly and inadequate.

These traditional lands are meant to provide for the future generations of the Orang Asli. With the acquisition of the traditional lands and inadequate compensation, the future of the Orang Asli becomes uncertain. They neither have the lands where they can live on nor the money to provide for the future (Awang, 1996).

4.0 RECOGNITION FOR COMPENSATION OF ORANG ASLI NATIVE LAND

Generally, it was agreed that the determination of Orang Asli native land compensation will be based on an assessment of the specific traditional land rights and interests, and on the specific effects of an activity on their traditional land. In order for Orang Asli native land to be recognised by the common law, the ‘facts’ of Orang Asli native land have to be determined through translation from one cultural domain to Malaysian common law. It is important, therefore, to ascertain what appear to be the current limits of that common law translation. The translation problems involved are not new; there is a long experience of them under the Aboriginal Peoples Act, 1954.

Many of the same difficulties are arising in the native title discussion. As accepted by Justices Deane and Gaudron in Mabo (No 2)\(^7\), it is correct to assume that ‘the traditional interests of the native inhabitants are to be respected even though those interests are of a kind unknown to English law’. Justice Brennan went so far as to argue that ‘the general principle that the common law will recognise a customary title only if it be consistent with the common law is subject to an exception in favour of traditional native title\(^8\). The extent of that exception is uncertain and still being explored (Smith, 2001). As for Orang Asli native land, the compensation will require an innovative jurisprudential approach that acknowledges the Orang Asli native land.

\(^7\) Mabo v Queensland (no. 2) (1992) 175 CLR 1
\(^8\) Ibid
Therefore, legal and comparative studies are required to equate Orang Asli native land compensation rights and interests either to Western property law concepts and precedents, or to market land valuation methodology (Ling, 2004; Smith, 2001).

The conventional principles of special value to the owner or solatium will be of little direct applicability, if any, in assessing the value of Orang Asli native land. Freehold market value does not provide a notional limit for that culturally-based value nor for the losses of past, current and future generations.

The economic, social, material and spiritual domains of Orang Asli life are seen as indivisible and fundamentally connected with land. Orang Asli principles and processes of compensation are built upon the same paradigm. Orang Asli native land compensation is best viewed conceptually as a multi-dimensional package whose form and purpose reveal the distribution of social, legal, relations, entitlements, and value preferences. The new recognition space for Orang Asli native land compensation will expand and contract as courts deliver their judgments and parties negotiate outcomes (Ling, 2004). At the heart of that space, however, one principle should remain constant: that Orang Asli native land constitutes a proprietary right, and its extinguishment amounts to an acquisition of property (Sagong Tasi v The Selangor State Government [2002] 2 MLJ 591).

Determining the value of Orang Asli native land for the purposes of compensation will focus on what kind of property right it is and, in particular, what constitutes ‘property’, ‘loss’, ‘extinguishment’, ‘adequate’ and ‘fair’. There will continue to be contending evaluations of these concepts, in legal, economic and other forums across the world, and a more ‘socially oriented vision of entitlement is starting to emerge’ (Gray 1994). Such a trend is well suited to creating a recognition space, and facilitating practical outcomes for Orang Asli native land compensation. Common law recognition and valuation of native land for the purposes of compensation will require an expansion of ‘the borders of the legal imagination’ (Macklem 1991). Perhaps the Orang Asli land owners are not mute, without a discourse of their own about law, property, and the value of inalienable possessions. Hopefully, with the common law development of Orang Asli native land that is now taking place, Orang Asli can do more than simply bring their ‘special knowledge and insights’ to bear in native land compensation cases.

5.0 CURRENT THINKING ON THE VALUATION APPROACHES

When deciding on an appropriate basis for assessing compensation for extinguishment or impairment of Orang Asli native land, it appears natural as a starting point to consider the conventional land valuation principles. However, a more flexible approach seems required which will combine principles applicable
to valuation and also to the assessment of intangible factors such as occurs when a court assesses general damages, for example, in relation to negligence or defamation. Compensation for damage to Orang Asli native land will include monetary and non-monetary components or, as suggested by Whipple (1997), ‘material’ and ‘non material’ components.

The material aspect is the loss of or effect upon the land. Generally, the owner of a compulsorily acquired land is entitled to the market value of the land or the value of the land to the owner, whichever the greater. The former focuses on a likely arms’ length agreed sale price assuming a willing buyer and a willing seller. The latter focuses on any special value to the owner.

These general principles have been refined and developed for the purpose of valuing land which may not be capable of sale or in relation to which there is no apparent market, and also to value lesser interests such as for leases, easements and licences. However, the market value which may be attributed to a freehold title to land remains the starting point of any attempt to compensate for loss of an interest in land. It is likely that these principles are being applied or developed in the determination of compensation for loss or impairment of native title rights (Smith, 2001). In this context, the inalienability of native title will not pose a great difficulty. Although the determination will involve assessing the value of the land to the native title holders, the market value of a freehold title to the same land will be a benchmark (Smith, 2001; Boyd, 2000). This approach has been adopted by the Privy Council, the High Court (in relation to an acquisition of land from traditional owners in New Guinea) and by United States courts (Keon-Cohen, 1995).

The essential nature of land to indigenous peoples is both metaphysical and material (Small, 1997). Hence, any assessment for compensation needs to consider both these dimensions. “To date there has been no court decision which provides for the payment of compensation for elements of cultural or spiritual value.” (Sheehan, 1997). Whipple (1997) suggests that the assessment of spiritual rights is outside the scope of the “formal object of the discipline of valuation” and should, more appropriately, be assessed by the Federal Court. Sheehan (1998), on the other hand, argues that “special value to the owner and solatium can be constructed to cover compensation for the loss of access to ceremonial lands, spiritual deprivation and loss or perceived loss of social environment.” In addition, Sheehan (1998) informs us that “an unreported decision of the Canadian Supreme Court on 11 December 1997 has given rise to the concept that indigenes in Canada have not only a constitutional right to own their traditional lands but also to use them in a largely unrestricted manner. It is beyond the scope of this paper to examine the respective merits of these statements. Nevertheless, some likely implications of the Orang Asli native land issue for valuers are:

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9 Spencer v Commonwealth (1907) 5 CLR 418
10 Pastoral Finance Association v Minister (1914) AC 1083
• the need for development of new valuation methodologies to appropriately assess compensation;
• the need for reassessment of existing methodologies in light of these developments;
• the evolution of new case laws to interpret the Aboriginal Peoples Act, 1954 and the property rights of Orang Asli; and
• the creation of new relationships between the legal system and the valuation profession.

It is suggested that this may lead to the development of a ‘new arm’ (Sheehan, 1998) of land law specifically for indigenous property rights which can decide simultaneously on matters of both federal and state laws. It is also anticipated that valuers will work in partnership with other disciplines such as ethnoecological and ethnographic consultants and heritage consultants.

Boyd (2000) proposed that valuers can assess the appropriate range of values of partial and co-existing property rights of indigenous people. He comments on two issues that should be raised: the sum of the value of the partial rights does not necessarily equal the market value of the total property and, co-existing property rights usually have a detrimental effect on the party property rights; thus, an additional co-existing right can reduce the value of an existing right. According to Fitzgerald (1997), some native title rights may co-exist with the rights granted to the pastoral lessee over the same track of land. The same situation also happened in Malaysia where the Orang Asli Reserves or Areas sometimes co-exist with ‘newly alienated’ rights of land of private company.

Whipple (1995) identifies the three appropriate valuation approaches as:
• Inference from past transactions
• Simulation of the most probable buyer’s price fixing calculus
• Normative Modelling (Contingent Valuation)

5.1 Inference from Past Transactions

This relies on evidence from relevant market activity and infers value from similar scenarios. If factual market evidence is used, this approach consequently produces the most appropriate results (Boyd, 2000).

Since Orang Asli native land is of forest nature, valuation by reference to the market prices of forest should be considered by the valuers. Because of the similarity between actual forest and Orang Asli native land, it could be an advantage to adopt forest valuation for Orang Asli native land valuation; in principle, both types of lands are non-titled.

Many goods and services derived from tropical forest land uses are traded, either in local or international marketplaces, including wood products (timber, pulp and fuel), non-wood forest products (food, medicine and utensils), crops and livestock products, wildlife (meat and fish) and recreation. For those
products that are commercially traded, market prices can be used to construct financial accounts to compare the costs and benefits of alternative forest land use options. In some cases, it may be necessary to adjust market prices to account for market.

5.2 Simulation Of The Most Probable Buyer's Price Fixing Calculus

This approach is appropriate where direct market evidence is not available but market based scenarios are known. When the identity of the potential buyers is established, investigation is made to elicit the way these buyers fix the price, and this is considered a market-based approach to price estimation. In this approach, probability is a major component in simulation and probability distributions should be utilized in arriving at expected value. The success of this approach depends on the existence of offers from potential buyers.

5.3 Contingent Valuation (CV)

CV elicits individual expressions of value from purchasers for specified increases or decreases in the quantity or quality of a non-market good. Most CV studies use data from interviews or postal surveys (Mitchell & Carson 1989). Valuations produced by Contingent Valuation Method (CVM) are "contingent" because value estimates are derived from a hypothetical situation that is presented by the valuer to the respondent. The two main variants of CV are open-ended and dichotomous choice (DC) formats. The former involves letting respondents determine their "bids" freely, while the latter format presents respondents with two alternatives to choose from. Open-ended CVM format typically generates lower estimates of willingness to pay (WTP) than DC designs (Bateman et al. 1995).

Carson (1991) argues that the theoretical foundations of a CVM are firmer than those of other valuation techniques, because of its direct measures. Moreover, CV is the only generally accepted method for estimating non-use values, which are not traded in marketplaces and for which there are no traded substitutes, complements or surrogate goods, which can be used to impute values. On the other hand, because no payment is made in most cases, some observers question the validity of the stated preference techniques. Critics argue that CVM fails to measure preferences accurately and does not provide useful information for policy (Diamond & Hausmann, 1994). Even practitioners accept that poorly designed or badly implemented CV surveys can influence and distort responses, leading to results that bear little resemblance to the relevant population's true WTP. Much recent attention has focused on overcoming potential sources of bias in CVM studies. Resolving these difficulties involves careful design and pre-testing of questionnaires, rigorous survey administration, and sophisticated econometric analysis to detect and eliminate biased data.
According to Whipple (1995), in applying this approach valuer tends to make a series of assumptions on how the market should behave. Among the assumptions concerned are the types of interested buyer; market forecasting; decision criteria; alternatives available and availability of information as desired. CVM is the least accurate approach as it is necessary to make numerous assumptions (Boyd, 2000). This does not mean that CVM should not be used because, in practice, market information always is not readily available; where this is the case, CVM might be the answer.

6.0 PRELIMINARY SURVEY

6.1 Methodology

A preliminary survey was conducted from 21st September to 20th October 2006. The purpose of the survey is to explore the issues to payment of compensation for acquisition of Orang Asli native land in Malaysia. The questionnaire was closed-ended in nature and was designed such that it does not take long for the respondent to answer. The target population in this survey was the officers who dealing with Orang Asli affairs in both public and private sectors as well as NGOs in Malaysia. Two hundred (200) questionnaires were distributed to these respondents based on the following geographical locations: Klang Valley (N = 100), Northern Region (N = 40), Southern Region (N = 40) and East Coast (N = 20). 68 questionnaires were returned to give the response rate of 34%, which is considered appropriate to generalize the results based on Ellhag & Boussabaine (1999) and Idrus & Newman (2002). The data gathered from the survey have been analysed using descriptive statistical techniques. Generally the weights used in this paper (except mentioned otherwise) are 1=strongly disagree; 2=disagree; 3=neutral; 4=agree; and 5=strongly agree.

6.2 Findings

6.2.1 Part A: Background of the Respondents

Table 1: The Main Characteristics of the Sample

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Age

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Experiences in dealing with Orang Asli affairs (years)

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Type of Organisation

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</tbody>
</table>


As presented in Table 1, the respondents who took part in the survey are very qualified to give their opinion. This was evident from the fact that 44% of them have involved in land acquisition projects of Orang Asli native land of between 2 to 10 projects and 56% of them at least have involved in 1 project. Apart from that, 62% of them experienced in dealing with Orang Asli affairs between 2 to 10 years; 3% more than 10 years and only 35% are less than 2 years. On the nature of organizations of the participating respondents, it showed that 85% of respondents are from government sector (including universities); 9% are from Orang Asli related NGOs and the balance, 6% are from private firms.
6.2.2 Part B: General Perspectives On Land acquisition of Orang Asli native Land

Q1: Do you think that existing laws in Malaysia provided enough protection to the affects of an acquisition to Orang Asli native land

Chart 1: Protection to the affects of an acquisition to Orang Asli lands

When asked as to whether the existing laws (Federal Constitution, 1957 and the Aboriginal Peoples Act, 1954) and other related rules provide enough protection to the affects of an acquisition to Orang Asli native land, 84% thought that protection were not enough, while 13% were not sure and only 3% thought it enough protection given under the present act and rules. This suggests that property rights of Orang Asli remains as a main issue that needs to be addressed.

Q2: Opinion on the issues of land rights of Orang Asli

Table 2: Opinion on issues of land rights

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Issues of land rights</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Land rights of Orang Asli are politically marginalized, poorly managed and not accorded to adequate protection</td>
<td>4.54</td>
</tr>
<tr>
<td>2</td>
<td>No laws regard the Orang Asli as legal owner of Orang Asli Reserves; their rights are only as tenant-at-will of state land</td>
<td>4.40</td>
</tr>
<tr>
<td>3</td>
<td>Due to lack of mechanism to keep track of Orang Asli lands, State Government often ends up alienating the ancestral land to private developers</td>
<td>4.27</td>
</tr>
<tr>
<td>4</td>
<td>Negotiation with Orang Asli representatives and JHEOA is mandatory before compulsory acquisition</td>
<td>4.05</td>
</tr>
<tr>
<td>5</td>
<td>Given a wider interpretation to the meaning of ‘land occupied under customary rights’ of Section 2, Land Acquisition Act 1960 to cover Orang Asli land</td>
<td>3.66</td>
</tr>
</tbody>
</table>

Based on Table 2 four main issues of land rights of Orang Asli scored with means of more than 4.0 and were therefore considered aggereable by respondents. These are: land rights of Orang Asli are politically marginalized and not accord to adequate protection; no laws regard the Orang Asli as legal owner of Orang Asli Reserves; their rights are only as tenant-at-will of state land; due to lack of mechanism to keep track of Orang Asli lands, State Government often ends up alienating the ancestral land to private developers and; negotiation with Orang Asli representatives and JHEOA is mandatory before compulsory acquisition. Perhaps given a wider interpretation to the meaning of ‘land occupied under customary rights’ of Section 2, Land Acquisition Act 1960 to cover Orang Asli land, with the mean score of 3.66, also agreed as a main issue in land rights.

Q3: Ranking of the importance of land acquisitions' issues of Orang Asli native land

Based on feedback from the survey, the general ranking of the importance of land acquisition of Orang Asli land in Malaysia is as follows:

Table 3: Ranking of the importance of land acquisition issues of Orang Asli native land

<table>
<thead>
<tr>
<th>Land acquisition issues</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land rights of Orang Asli</td>
<td>1</td>
</tr>
<tr>
<td>Lack of protection given by acquisition laws to Orang Asli</td>
<td>2</td>
</tr>
<tr>
<td>Consideration on payment of compensation for the ancestral land</td>
<td>3</td>
</tr>
<tr>
<td>Determination of monetary and non-monetary compensation</td>
<td>4</td>
</tr>
<tr>
<td>The absence of uniform approach for dealing with the quantum of compensation among state</td>
<td>5</td>
</tr>
<tr>
<td>Process/procedures of acquisition on Orang Asli land</td>
<td>6</td>
</tr>
</tbody>
</table>


As tabulated in Table 3, the land rights ranked the highest among the main concerns on land acquisition issues of Orang Asli lands. Lack of protection given by acquisition laws to Orang Asli and consideration on payment of compensation for the ancestral land are placed on second and third rank respectively. Process or procedures of acquisition on Orang Asli land was opined by respondents as the least important. The result of this survey is concordant with research findings by Smith (2001); Boyd (2000); Sheehan (1997); Nik Yusof (1996) and Sutton (1981) who state that land rights of the indigenous peoples is the main issue in aboriginal researches.
6.2.3 Part C: Compensation Issues

Q4: Issues on Compensation of Orang Asli Native Land

Table 4 itemises the 7 listed issues of compensation for acquisition of Orang Asli native land. The respondents agreed that all issues (except issue at rank 7) have scored a mean score more than 4.0. This means that they were agreed that all the issues are important to be taken into consideration in Orang Asli land acquisition researches. Keith (1984) noted that private property is to be taken only for public use, and with the payment of just compensation and the respondents believed it was the same for Orang Asli land. Respondents disagree that Orang Asli should be allowed to challenge the award of their reserve land by engaging professional valuers. This is because at current scenario, land rights of Orang Asli has yet been resolved.

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Issues of compensation</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Existing laws fail to adequately take into consideration the needs and impact of land loss on the lives of Orang Asli</td>
<td>4.97</td>
</tr>
<tr>
<td>2</td>
<td>Orang Asli lands are imbued with cultural, spiritual, communal and economic dimensions far beyond private registered land’s market value</td>
<td>4.95</td>
</tr>
<tr>
<td>3</td>
<td>Compensation proposal is made available for review and consideration by representatives of Orang Asli and JHEOA before inquiry</td>
<td>4.83</td>
</tr>
<tr>
<td>4</td>
<td>Additional compensation should be added to the market value for cultural and spiritual attachment</td>
<td>4.79</td>
</tr>
<tr>
<td>5</td>
<td>Compensation elements for land acquisition of Orang Asli reserves are not uniform among states in Malaysia</td>
<td>4.73</td>
</tr>
<tr>
<td>6</td>
<td>Land acquisition powers of Orang Asli native land are for public purposes only</td>
<td>4.60</td>
</tr>
<tr>
<td>7</td>
<td>Orang Asli should be allowed to challenge the award of their reserve land by engaging professional valuers</td>
<td>2.36</td>
</tr>
</tbody>
</table>


Q5: Perceptions on compensation package currently practised in Malaysia

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Compensation Package</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Monetary compensation (payment on loss of trees and buildings)</td>
<td>2.03</td>
</tr>
<tr>
<td>2</td>
<td>Non-monetary compensation (e.g. resettlement program, alienation of agriculture land, recruitment of job etc)</td>
<td>3.27</td>
</tr>
</tbody>
</table>

The weights used in this question are 1= inadequate; 2= hardly adequate; 3= adequate; 4= generous; and 5= exceedingly generous. Table 5 shows the general ranking of compensation packages being implemented for acquisition of Orang Asli native lands in Malaysia. Monetary compensation was considered ‘hardly adequate’ by the respondents. Payment of productive trees and buildings as required by the Aboriginal Peoples Act, 1954 are not a fair basis for compensation of an acquisition of Orang Asli native land. However, respondents believed that non-monetary compensation accorded by the authority is ‘adequate’ but still has a room for improvements due to the mean score at only 3.27.

Q6: Suggestions on how to upgrade the unstructured nature of existing compensation

Table 6: Suggestions on how to upgrade the unstructured nature of existing compensation

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Suggestions</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Land rights of Orang Asli native land must be recognized in law</td>
<td>4.81</td>
</tr>
<tr>
<td>2</td>
<td>Compensation for land should be given due consideration based on its market value</td>
<td>4.78</td>
</tr>
<tr>
<td>3</td>
<td>Land Acquisition Act, 1960 must be amended to incorporate compensation for Orang Asli native land</td>
<td>4.60</td>
</tr>
<tr>
<td>4</td>
<td>There is a need for Malaysia to adopt other countries practices to develop compensation framework for Orang Asli native land</td>
<td>4.54</td>
</tr>
<tr>
<td>5</td>
<td>Make the existing structures (monetary and non-monetary compensation) a law</td>
<td>4.53</td>
</tr>
<tr>
<td>6</td>
<td>Payment of non-monetary compensation must be made uniform for all states in Malaysia</td>
<td>4.49</td>
</tr>
<tr>
<td>7</td>
<td>The decisions by court in Sagong Tasi that recognized Orang Asli land rights and compensation for acquisition of their land must be implemented in due course by related parties</td>
<td>4.36</td>
</tr>
</tbody>
</table>


The weights used in this question are 1= strongly not recommended; 2= slightly not recommended; 3= neutral; 4= slightly recommended; and 5= recommended. Table 6 shows the general ranking of suggestions on how to upgrade the unstructured nature of existing compensation acquisition of Orang Asli native lands in Malaysia. All suggestions posted in the list have scored a mean score more than 4.0, meaning that the respondents recommended that the suggestions tend to be practical and need to be implemented.
Q7: Valuation approaches

Table 7: Valuation Approaches

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Valuation approaches</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Contingent Valuation Method (CVM)</td>
<td>4.13</td>
</tr>
<tr>
<td>2</td>
<td>Simulation of the most probable buyer’s price fixing</td>
<td>3.25</td>
</tr>
<tr>
<td>3</td>
<td>Inference from past transactions (market evidences)</td>
<td>1.21</td>
</tr>
<tr>
<td>4</td>
<td>Traditional Valuation Methods</td>
<td>1.13</td>
</tr>
<tr>
<td>5</td>
<td>Advanced Valuation Techniques (e.g. Monte Carlo, MRA etc)</td>
<td>1.10</td>
</tr>
</tbody>
</table>


The weights used in this question are the same as Question 6. Table 7 shows the general ranking of valuation approaches being recommended for quantifying of compensation for acquisition of Orang Asli native lands in Malaysia. CVM was the only and unanimously recommended by the respondents to be implemented in valuing Orang Asli native land. However, all other valuation approaches are less suitable as suggested by the respondents. Furthermore, respondents believed that traditional valuation methods and advanced valuation techniques strongly not recommended in valuation exercises.

6.2.4 Part D: Challenges in Quantifying Compensation

Q8: Challenges

Table 8: Challenges in quantifying Compensation

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Challenges</th>
<th>Mean Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Issues of Orang Asli land rights</td>
<td>4.75</td>
</tr>
<tr>
<td>2</td>
<td>Monetary and non-monetary compensation</td>
<td>4.71</td>
</tr>
<tr>
<td>4</td>
<td>Negotiation for compensation</td>
<td>4.53</td>
</tr>
<tr>
<td>5</td>
<td>The most reliable valuation approach</td>
<td>4.49</td>
</tr>
</tbody>
</table>


As can be seen in Table 8, the respondents agreed that all listed challenges were important and need to be handled wisely. Based on the result of the survey, section 7.0 of this paper discusses in depth the challenges in quantifying of the compensation for acquisition of the Orang Asli lands.
7.0 DISCUSSION ON THE CHALLENGES IN THE VALUATION OF ORANG ASLI NATIVE LAND FOR ACQUISITION COMPENSATION

The challenges come mainly from the need to identify the exact nature of the rights of Orang Asli on their native lands. Also, they flow from the types of compensation that can potentially be considered.

4.1 Issue Of Orang Asli Land Rights

Generally, rights can be viewed either as legal rights and/or as economic rights.

Legal rights - Legal rights arise as a result of formal arrangements, including as a result of constitutional, statutory, judicial rulings or as part of an organised system of indigenous laws, and informal conventions and custom. The nature of property rights will affect the way resources are utilised and the net social benefit enjoyed by a community from their resources. The position of law has been such that the Orang Asli do not have legal rights over their traditional lands. This situation, however, can change if the Tagong Tasi case finally gets its endorsement. The Tagong Tasi is a landmark case in the sense that the court has, for the first time, recognized the legality of rights of Orang Asli native lands; at the moment this case is pending appeal to a higher court.

Economic rights - Economic rights depend on the enforcement of legal rights and consist of the right holder’s ability to enjoy the benefits from that holding. Economic rights may include the ability to enjoy benefits and to meet responsibilities, either directly through consumption and cultural appreciation or indirectly through exchange, including barter, sale, rent, inheritance and gift giving.

Orang Asli rights and interests - Orang Asli rights and interests recognised under the Aboriginal Peoples Act, 1954 define the range and type of privileges and responsibilities holders of Orang Asli native land rights possess. The special or unique features of Orang Asli native land affect value and the way valuation might be estimated. Pre-existing Orang Asli rights and interests differ from common law concepts of title in land (Nik Yusof, 1996). Orang Asli native land rights are uniquely ‘of their own kind’, in that the rights provide closely intertwined, or joint, material and cultural benefits, where a community’s cultural benefits are specific to place (Awang, 1996; Nik Yusof, 1996). According to Sutton (1998), differing degrees of rights and interests in land has BEEN characterized as core and contingent. The Court decision in Sagong Tasi which recognised the Orang Asli land rights will, if endorsed, affect the valuation of compensation for Orang Asli native land in near future.
4.2 Monetary and Non-Monetary Compensation

The benefits or choices available to an individual or community are not without limit; indeed if there are, then there would be no conflict over resource use, nor would there be any need to make choices between different items, and there would be no relative differences in the value of items. Value, then, is the result of scarcity and the need to make choices. The choices available to an individual or a community are constrained by the individual’s or the community’s budget. Economic value indicates the relative preference for the benefits obtainable from the ownership of an item relative to the benefits obtainable from ownership of some other item and the willingness to go without something in order to obtain more of something else. Confusion about what is meant by the term ‘value’ has created difficulties in its application to Orang Asli native land rights. Many think of value solely in terms of market or monetary value, and often attach intrinsic value to money itself. While market prices may provide a low cost estimate of the relative value society places on the benefits obtainable from different items, neither money nor the market are necessary for value to exist. The lack of trade in Orang Asli native land rights does prevent Orang Asli from treating the benefits of their native land rights as economic goods.

Based on Sections 11 and 12 of the Aboriginal Act, 1954 compensation for acquisition of Orang Asli native land is subjected to payment of productive trees and buildings on the acquired area only. This monetary compensation is mandatory under the existing law, but does not cover payment for loss of Orang Asli ancestral land. On top of that, as being practised in Malaysia, the state government does have a package of non-monetary compensation over and above the requirement of payment for loss of trees and buildings. The non-monetary package is ex-gratia in nature, calculated based solely on the discretion of the state and is not uniform among state government. The components of non-monetary compensation are normally inclusive of resettlement programme (which can come in the forms of, for example, a house and 2.5 hectares of agricultural land) and if the state is generous enough, this will extend to providing monthly allowances (e.g. RM500 per month) to each family for such a duration until the agricultural land is ready to produce. In relation to this, no valuation approach is needed to determine compensation as the existing structure is not paying for loss of native land. Even though the calculation of compensation for loss of trees and buildings is always referred to a valuer, no technical approach is used to arrive at the total compensation. The calculation is a matter of applying the value per tree from a uniform value list prepared by the Valuation and Property Services Department, Ministry of Finance Malaysia to the number of trees involved.
4.3 **Legal Framework - Federal Constitution, 1957; Land Acquisition Act, 1960; Aboriginal Peoples Act, 1954**

Government intervention over land development is exercised through the Land Acquisition Act (1960) and via Article 13 of the Malaysian Constitution (1957). The latter stipulates that no person may be deprived of property except in accordance with law and that no law may provide for compulsory acquisition or for the use of property without adequate compensation. With regard to land acquisition by the Federal Government, Article 83 sets out detailed procedures for land compensation as stipulated by the Malaysian Constitution (1957). Therefore, using the power contained in the Land Acquisition Act (1960), the government can acquire land for public purposes with adequate compensation as determined under Schedule 2 of the Act. Adequate compensation, therefore, as stated under the provision of Article 13(2) of the Federal Constitution refers to the amount of compensation which is decided, considering all principles stated under the First Schedule of the Land Acquisition Act 1960.

Even though the State Authority, under the provision of Land Acquisition Act 1960, has the power to take possession of any private land, it does not allow the authority to violate one’s right onto their private properties (Omar & Ismail, 2005). Unfortunately Orang Asli native land rights are not considered as private properties, but rather only as tenant-at-will. Under the Aboriginal Peoples Act 1954, the government perception towards Orang Asli native land is no better than a state land. Based on these reasons, the acquisition of Orang Asli native land is not made under the powers of Land Acquisition Act 1960 which contains the provision to compensate the land but, the compensation payable to Orang Asli only based on provision of Sections 11 and 12 of the Aboriginal Peoples Act 1954 for loss of productive trees, activities on land and buildings.

4.4 **Negotiation for Compensation**

If the compensation awarded to Orang Asli native land includes a property right transmitted across time to succeeding generations, then compensation for ongoing effects must, in fairness, also be made available to those future generations. If the extinguishment of Orang Asli native land constitutes cultural loss of ‘property for grouphood’, that argument is all the more persuasive when, as Moustakas (1989) points out, future generations are unable to consent to current transactions that threaten their existence as a group. For that reason, compensation should include a loading for inter-generational equity. The alternative to a current loading is that compensation could be staggered by developing conjunctive conditions for its assessment over the life of an act. The challenge would be how to conduct the assessment.

Staggering the negotiation for compensation might not satisfy the needs of any party for current certainty about the exact total of compensation, especially
when that amount could effectively constitute a final cap on compensation. On the other hand, such an approach would have the advantage that “the total amount of compensation could be more directly linked to actual impacts (positive or negative); be informed by ongoing impact assessment; and be distributed to the persons actually experiencing impacts over the life of an act. It might also ensure that Orang Asli native land would have benefits remaining, to enable them to deal with the later ‘closure’ of a resource development project, and the need to re-establish access to, and use of, the land involved” (Altman & Smith 1994).

For the parties involved in negotiation and mediation, as opposed to court litigation, the consideration of Orang Asli native land compensation is becoming the vehicle for developing other kinds of social and economic relationships. In the process, contending values and objectives have to be settled to mutual satisfaction. To do so, a number of practical challenges are arising, and some old policy lessons are re-emerging.

### 4.5 The Most Reliable Valuation Approach?

Boyd (2000) believes that the approaches discussed in Section 5 are the most appropriate approaches to use to arrive at reasoned property value of indigenous peoples. He recommended that the valuer select the approach based on the progression of the three approaches, from inference to simulation and to CV as to suit the valuation exercise. How does this translate to the situation for Malaysia? For Orang Asli native land, where changes in property rights exist, it is crucial to differentiate between market sentiment and reaction of the community. Further, no record of transaction of Orang Asli land prevails in the market. This is because land ownership for Orang Asli reserves or areas have never been granted by the government except for agricultural projects under resettlement programme where the land title is to be granted after full settlement of the loan for land development by the respective Orang Asli. Thus, inference of market evidence cannot be applied in valuing compensation of Orang Asli native land. Simulation of the most probable buyer's price fixing calculus approach seems also out of question because the identity of the potential buyers cannot be established. CVM is the only approach for valuers in Malaysia to apply in determining the compensation for Orang Asli native land provided that the land right issues of Orang Asli native land are overcome.

### 5.0 MALAYSIAN EXPERIENCE

Presented below are the Malaysian experience in dealing with the calculation of compensation for Orang Asli native lands; the framework by Burke (2002) has been adopted for the layout.
<table>
<thead>
<tr>
<th>Principles</th>
<th>Evidence</th>
<th>Calculation</th>
<th>Malaysian Experience</th>
</tr>
</thead>
</table>
| Insult     | • The formal determination of native title rights.  
             • (If no determination) the formulation of native title rights determined in the compensation hearing. | • Based on the most affected individual.  
             • Minimum based loosely on non-economic loss for injury to homes in tort cases.  
             • Maximum on the income producing value of total figure.  
             • Individual to group adjustment. | • Pilot study showed that Orang Asli are not really insulted by acquisition, as long as the compensation packages offered by the government are reasonable. For example, compensation packages for each family of Orang Asli affected under the Privatisation Project of Bukit Lanjan Township were offered: 1 unit bungalow house; 1 unit double storey terrace houses; 1 unit low-cost apartment for each child above 15 years old; RM45,000 worth of Trust Fund unit and, a monthly allowance @ RM500 for 3 years (period of construction). Due to this attractive compensation package, only 13 families out of 158 families objected the offer. |
| Disturbance| • loss of access to sites, hunting grounds, other natural resources;  
             • loss of access through the area to other areas; | As above | • Based on Adong Kuwau case, a total of RM26.5 million was awarded to the community of Orang Asli due to loss of hunting grounds and traditional resources. This payment is for loss of income so affected, for a period of 25 years.  
             • Recognition for disturbance is also given by Article 4 of Federal Constitution, 1957 which allows the Orang Asli to roam/subsist in any state forest in the country. Therefore, an acquisition of their reserve will not so |
| Mental Distress | • Feelings about the loss of homeland; • concern about sites and the proposed use of the country; • concerns about future generations; • Expert anthropologic al evidence on the above. | As above | • To overcome mental distress of Orang Asli community, the government has implemented the following policy for Resettlement Program: appropriate infrastructure and amenities at resettlement location; motivation programme for Orang Asli to adapt to new environment and life; special and systematic agricultural projects to ensure stable income for Orang Asli at present and in the future and, land ownership for them after the development cost of such project is fully settled by the respective Orang Asli. |
| Economic Value | • Justification of the selection of analogy (freehold, leasehold, profit a prendre etc). • Expert evidence of valuation of the market value of the chosen analogy, considering the highest and best use. | The straightforward notional figure similar to special damages. | • Attempts have been made by the Ministry of Rural Development to alienate land to each family of Orang Asli in Malaysia. If approved, each family will be entitled to 2.5 hectares of land which comprises 2 hectares of agricultural land, 0.4 hectare of orchard land and 0.1 hectare of housing plot. The site may or may not be at the same site where the existing Orang Asli being inhabited. • In Senggong Tasi case, the Court has ruled that the land rights of Orang Asli Reserve are recognized as similar to private titled land. But, on compensation, the Court still does not consider the Land Acquisition Act, 1960 compensation |
| Younger Generation | • Age composition of the native title group, current instruction of the younger generation in traditional laws customs relating to the area;  
• The typical time span of each generation based on genealogical records of the native title group;  
• Expert evidence of current long-term return on secure investments. | An estimation based on projected real returns using the compound interest formula and making allowances for inflation and taxation. | • Under the present policy, the government is encouraging the Orang Asli to leave the forest and live near to other communities. By this move, it is easy for the government to provide education, healthcare and, development to Orang Asli that have long been benefited by other communities. If they still refuse, their younger generation is encouraged to move out and stay at government school hostels to ensure proper education is given to them.  
• Under ‘Program Pembangunan Minda’ (Mindset Development Program) by JHEOA, the younger generation is trained to adopt real world challenges and integrate with other communities.  
• The idea is to avoid political marginalisation for younger generation of Orang Asli as experienced by their older generation (if any). |
8.0 CONCLUSION

This paper has discussed the importance of examining the issue of Orang Asli native land compensation since there is no judicial guidelines and valuation discourse on most of the basic issues of land rights and valuation approaches in place. According to the survey results, the respondents perceived that existing laws fail to adequately take into consideration the needs and impact of land loss on the lives of Orang Asli. Furthermore they claimed that monetary compensation was considered ‘hardly adequate’ and payment of productive trees and buildings as required by the Aboriginal Peoples Act, 1954 are not a fair basis for compensation of an acquisition of Orang Asli native land. However, the respondents believed that non-monetary compensation accorded by the authority is ‘adequate’ but still has a room for improvements.

It was accepted that most of the compensation for acquisition of Orang Asli native land rights is likely to be for non-economic loss, structuring this potentiality should be given due focus. The aim is to seek judicial solutions to compensation problems of Orang Asli native land. The difficulties encountered are on the question of whether Orang Asli native land compensation should be the subject of legislative reform. This would guide the courts, to a certain extent, by listing relevant factors to be taken into account when assessing compensation. Among the factors are economic and non-economic loss; individual and communal rights; disruption to cultural heritage; an ability to pay of the acquiring body and; the likely effect of the payment of compensation on other sources of income and support.

In Malaysia, the case of Sagong Tasi is under appeal at the Federal Court. It will be interesting what the results would be. Nonetheless, it is clear that the decision will have implications for the future treatment of valuation compensation for Orang Asli native lands. Last, but not least, negotiation between related parties involved is the preferred course of action in the current scenarios of uncertainty.
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